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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,242	02/12/2004	Michael R. Friton	005127.00180	2638
22907 7590 07/12/2007 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051			EXAMINER KAVANAUGH, JOHN T	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 07/12/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

<b>Office Action Summary</b>	<b>Application No.</b> 10/776,242	<b>Applicant(s)</b> FRITON, MICHAEL R.	
	<b>Examiner</b> /Ted Kavanaugh/	<b>Art Unit</b> 3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 July 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-37 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on July 5, 2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. Claims 7,8,10,11,13-17,19,21-23,30,31,33,34,36,37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6857204 (Davis et al).

Davis teaches a foot-receiving device (figure 1) comprising a foot-housing member (shoe 100 having upper 112 and sole 114), a closure system (outer closure member 134), and a securing system (adjustable straps 138,140 and VELCRO system) as claimed except for the closure system having a mesh or braided panel. Davis does teach the upper 112 being made out of mesh to provide a light and breathable material and to keep the foot relatively dry during athletic activity (see col. 4, line 66 to col. 5, line 6) but is silent with regard to what the closure system (134) is made out of. It would have been obvious to one having ordinary skill in the art at the time the invention was made to also construct the closure system of Davis out of a mesh or braided material,

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since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Regarding claims 13-15 and the like, the closure system of Davis can be used on any shoe that requires a closure system, see col. 3, lines 22-24 and col. 4, lines 49-56. Therefore it would be obvious to apply the closure system of Davis to an shoe having a shoelace base securing system (These type of shoes are old, conventional and well known in the art) so that the wearer can better customize the fitting of the shoe. The shoelace base securing system represents the secondary closure system.

3. Claims 7,8,10,11,13-17,19,21-23,30,31,33,34,36,37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6857204 (Davis et al) in view of US 5992057 (Monti).

This rejection is being applied as a back-up to the first rejection since this one specifically teaches the outer covering made out of mesh (the shroud of Monti).

Davis teaches a foot-receiving device (figure 1) comprising a foot-housing member (shoe 100 having upper 112 and sole 114), a closure system (outer closure member 134), and a securing system (adjustable straps 138,140 and VELCRO system) as claimed except for the closure system having a mesh or braided panel. Davis does teach the upper 112 being made out of mesh to provide a light and breathable material and to keep the foot relatively dry during athletic activity (see col. 4, line 66 to col. 5, line 6) but is silent with regard to what the closure system (134) is made out of. Monti teaches an outer closure system (shroud 402) being made out of a mesh panel (404).

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Although Monti only shows the mesh panel extending over the heel area, Monti also teaches the shroud can have a plurality of mesh panels throughout, see col. 3, lines 52-65. It would have been obvious to construct the closure system (outer closure 134) of Davis out of a mesh panel, as taught by Monti, to further permit the footwear to breathe and ventilate itself. Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to also construct the closure system of Davis out of mesh, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Regarding claims 13-15 and the like, the closure system of Davis can be used on any shoe that requires a closure system, see col. 3, lines 22-24 and col. 4, lines 49-56. Therefore it would be obvious to apply the closure system of Davis to an shoe having a shoelace base securing system (These type of shoes are old, conventional and well known in the art) so that the wearer can better customize the fitting of the shoe. The shoelace base securing system represents the secondary closure system.

4. Claims 9,12,18,20,32,35 are rejected under 35 U.S.C. 103(a) as being unpatentable over reference(s) as applied to the claims above, and further in view of US 6532687 (Towns et al).

Towns teaches a magnetic fastener arrangement for straps on footwear. It would have been obvious to provide the adjustable straps of Davis (25) with a magnetic fastener arrangement, as taught by Towns, to provide a fastener that is simple and easy to operate. The system of Davis is an improvement over conventional types of closure

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systems that involve zippers, button and snaps by using VELCRO to provide an adjustable and taut closure system but nonetheless, it would be an obvious design choice to construct the closure system with a magnet fastener arrangement if the wearer was more concerned with a quick and simple closure system over an adjustable system.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:

-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”

--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”

-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.

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7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571) 273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

/Ted Kavanaugh/  
Primary Examiner  
Art Unit 3728

TK  
July 9, 2007